

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, . Case Number 1:20-cr-00142-1
Plaintiff, .
- v - .
IN CAMERA HEARING
ALEXANDER SITTENFELD, a/k/a . Wednesday, August 17, 2022
"P.G. Sittenfeld," . 11:30 a.m.
Defendant. . Cincinnati, Ohio

REDACTED TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DOUGLAS R. COLE, DISTRICT JUDGE

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1

PROCEEDINGS

2 THE COURT: Good morning. We're here this morning in
3 Case Number 1:20 -- well, *United States of America versus*
4 *Alexander Sittenfeld*. It's Case 1:20-cr-142.

5 And we're here this morning to provide an opportunity
6 to interview two additional members of the jury on a very
7 limited scope of inquiry, which is the question of whether or
8 not extraneous information became part of the jury
9 deliberations at any time in this case.

10 Can I ask counsel to please enter their appearances
11 for the record.

12 MR. SINGER: Matt Singer, Megan Gaffney Painter, and
13 Emily Glatfelter for the United States.

14 THE COURT: Good morning.

15 MR. RITTGERS: Good morning, Your Honor. Charlie
16 Rittgers, Gus Lazares, and Neal Schuett for P.G. Sittenfeld.

17 THE COURT: Good morning.

18 Let me start by apologizing for being late. We had a
19 sentencing run a little long this morning, so my apologies for
20 that.

21 As I understand the way we're going to proceed this
22 morning, we're going to do one of these jurors -- interview
23 one of these jurors by videoconference. The other juror is
24 going to appear live. I do appreciate the parties'
25 cooperation in terms of allowing the one juror to appear by

1 videoconference to minimize the imposition that we're putting
2 on these jurors.

3 And I think we're starting with the videoconference
4 juror; is that right?

5 COURTROOM DEPUTY: Yes, Your Honor.

6 THE COURT: Okay. Are the parties prepared to
7 proceed, or are there things we need to discuss before we
8 start?

9 MS. GLATFELTER: Your Honor, just two brief, sort of,
10 housekeeping matters. One, if we need to object during the
11 testimony, how would the Court prefer that we do that? With
12 the jurors in the room, or do we just need to stand and make
13 an objection?

14 THE COURT: Yeah, just treat it like a normal witness
15 examination.

16 MS. GLATFELTER: Okay. The second one is just to
17 clarify. I think during the post-verdict hearing the
18 government didn't really have an opportunity to talk to the
19 witnesses, but we would request the opportunity to ask
20 questions if necessary.

21 THE COURT: Absolutely. And I thought I provided an
22 opportunity for the government to ask questions. If I didn't,
23 it was my intent to, so I apologize.

24 MS. GLATFELTER: We didn't feel the need that we
25 needed to at that time either, but we wanted to reserve that

1 opportunity today.

2 THE COURT: Very good.

3 MS. GLATFELTER: Thank you.

4 THE COURT: Mr. Rittgers, anything we need to discuss
5 before we begin?

6 MR. RITTGERS: Your Honor, it might be longer than
7 the few issues that the government just raised. Don't shoot
8 the messenger. I'm reading what I've been -- and I apologize
9 that I'm looking at my phone, Your Honor. My notes are on my
10 phone because I've printed some of the raw material.

11 We thank the Court for the opportunity to question
12 these jurors.

13 Our request originally was for leave pursuant to
14 local Rule 471 to speak with any and all jurors freely outside
15 of court before this hearing.

16 We also challenged the constitution of that local
17 rule, Your Honor, as you're aware, and ask for a forensic
18 examination of Juror Number █'s phone, an issue that now has
19 been filed, the mandamus, on Monday.

20 We intended to question jurors under oath only after
21 we had the opportunity for the forensic examination, as well
22 as speaking with the jurors before a hearing on our own so
23 that we could do our own due diligence. Without it, we do not
24 believe that this hearing is a meaningful opportunity to
25 explore her bias under Lanier, Your Honor.

1 That being said, we don't want to waive any rights,
2 and we are participating in the hearing today.

3 We understand that the Court intends to strictly
4 apply Federal Rule 606(b) in the hearing, but we also believe
5 that the standard under the present scenario, given *Lanier*, is
6 broader: specifically, that we should be able to do a
7 meaningful investigation into the circumstances of external
8 communications, the impact of communications on the jury, and
9 whether or not the communications were prejudicial.

10 The question is whether, given the indication of jury
11 bias, this inquiry is adequate, and the adequacy is a function
12 of the probability of bias. The greater that probability, the
13 more searching and inquiry into is there a bias, as you know
14 from *Lanier*, Your Honor.

15 Before we start, I know the Court -- I believe the
16 Court indicated before, right after the verdict in this case,
17 that you spoke with the jurors. We would respectfully ask, if
18 the Court is willing to share, what was stated in that room,
19 if we're not permitted to speak with the jurors individually,
20 if the Court is willing to share with us any of the
21 conversation or substance that was discussed when you spoke
22 with the jury -- if you did. I could be wrong.

23 THE COURT: Yes. So you mean -- when I mentioned
24 that before the last hearing where you talked to the jury, I
25 went up and talked to the jury?

1 MR. RITTLERS: Yes, Your Honor.

2 THE COURT: Sure. I'll put that on the record.

3 So typically after a jury trial is over, I go up and
4 talk to the jury, in all cases, and just ask them about their
5 experience, are there things that we could do to make the
6 experience more pleasant, things for the jury, whether they
7 have any questions about the way in which trials operate, do
8 they have any experiences they wish to share with the Court
9 about how the trial went or any questions they have about why
10 this happened or why that happened.

11 I talk to them about how the court reporter does his
12 or her job of taking down what everybody says. We sometimes
13 talk about how the steno machine works. I don't recall if we
14 ended up talking about that here.

15 I think I did inquire a little bit about any concerns
16 that people may have had about COVID in light of the fact that
17 one of our jurors, as everybody here knows, did test positive
18 during the course of the trial.

19 Gosh, I don't remember discussing anything else other
20 than near the end, I released them, I told them they were free
21 from the admonishment not to talk to anybody about the case
22 and they could discuss their experience as jurors with the
23 case, that the admonitions I'd given them during trial were at
24 an end, that they were free to read newspaper articles, talk
25 with their friends or family about their experience as jurors,

1 their thoughts on the case.

2 I think I may have mentioned that, in light of the
3 public interest, reporters or media may attempt to track them
4 down. You know, I told them that I certainly wasn't telling
5 them they couldn't talk to newspaper reporters, but that they
6 may want to think about how that would play out and whether
7 they wanted to or not, that they weren't required to, and I
8 was not telling them they couldn't. So we talked about that.

9 And then I believe I excused the jury at that point
10 and asked the two jurors that we were going to talk with to
11 remain behind after those jurors left. The other jurors left,
12 and then I individually brought the two jurors in and told
13 them that the -- well, I told the first juror that we had
14 discovered that there had been some Facebook posts that seemed
15 to relate to the trial by that juror and that the parties had
16 some questions about those. I told the other juror that she
17 had been mentioned in comments on a Facebook post and so the
18 parties had some questions about. I told them that I was
19 going to bring them down and we were going to ask some
20 questions in chambers.

21 So that was the full extent of my recollection of
22 that conversation.

23 MR. RITTGERS: Thank you, Your Honor. I appreciate
24 you sharing that.

25 THE COURT: Absolutely. Any follow-up questions on

1 that, Mr. Rittgers?

2 MR. RITTGERS: No, Your Honor.

3 THE COURT: Any follow-up questions from the
4 government?

5 MS. GAFFNEY PAINTER: No. Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. RITTGERS: This is a procedural question, Your
8 Honor.

9 THE COURT: Sure.

10 MR. RITTGERS: In light of the mandamus that was
11 filed Monday on Rule 29 and Rule 33, is that stayed or is --
12 are we on a different timeline as a result of the mandamus?

13 THE COURT: I thought I saw a motion for extension of
14 time to file your response. It certainly seems to me that it
15 would make sense to try and get hammered out what the evidence
16 is going to be with regard to the juror misconduct issue
17 before proceeding on that, but I would hear from the
18 government if they have a different view.

19 MS. GLATFELTER: We don't oppose at this point, Your
20 Honor.

21 THE COURT: So I'm going to grant the requested
22 extension. If it turns out that for some reason there needs
23 to be an additional extension in your view, you're free to
24 file a motion for an extension at that point and I'll rule on
25 that, but I'm granting the currently pending motion for

1 extension of time on those post-trial motions.

2 MR. RITTGERS: Thank you, Your Honor.

3 Your Honor, in light of the fact that the Sixth
4 Circuit places a burden on the defendant in showing that the
5 verdict was tainted by any extraneous information, we'd ask
6 again -- and I know this is -- I don't want to relitigate
7 anything, but would it be possible for us to speak with these
8 individual jurors before they take sworn testimony today?

9 THE COURT: Speak with the jurors?

10 MR. RITTGERS: Yes.

11 THE COURT: No.

12 MR. RITTGERS: Yes, individually. Okay.

13 And is there any -- we would respectfully request a
14 modification to that local rule so that even after this
15 hearing we can speak with jurors. I assume that's denied
16 based on what just --

17 THE COURT: Yeah. I made a stand on the order that I
18 put out with regard to that. You know, as I noted, if
19 something comes out during testimony today that gives further
20 basis to believe that additional inquiry is warranted, we can
21 revisit that. But at this point I'm not waiving the local,
22 the admonition -- the prohibition in the local rule with
23 regard to juror contact.

24 MR. RITTGERS: Thank you, Your Honor. May I have one
25 minute to confer?

1 THE COURT: You may.

2 MR. RITTGERS: Do we know which juror is the virtual?

3 COURTROOM DEPUTY: Number █.

4 THE COURT: Number █.

5 MR. RITTGERS: Thank you, Your Honor.

6 (Pause in proceedings.)

7 MR. RITTGERS: Nothing else, Your Honor.

8 THE COURT: Very good.

9 Anything further from the government?

10 MR. SINGER: No, Your Honor.

11 THE COURT: All right. Let's proceed then. So Juror
12 █ is going to appear by video; is that right?

13 COURTROOM DEPUTY: I have to dial in.

14 THE COURT: Okay.

15 Given that you have the burden, Mr. Rittgers, I was
16 assuming you would go first.

17 MR. RITTGERS: Thank you, Your Honor.

18 (Pause in proceedings.)

19 MS. GLATFELTER: Your Honor, while we're dialing in,
20 I just wanted to put on the record and clarify -- thank you
21 for your recollection on that. You did give us the
22 opportunity to ask questions; we just didn't ask any. So I
23 wanted to clarify and make sure that I made that correction.

24 THE COURT: Thank you.

25 MS. GLATFELTER: Thank you, Your Honor.

1 THE COURT: Off the record for a second.

2 (Discussion off the record.)

3 THE COURT: I'll just note for the record that this
4 hearing is subject to at least a temporary seal. I'm going to
5 see what comes out in the testimony, but I'm going to at least
6 temporarily seal it.

7 THE COURT: So now we're logged in, Scott?

8 COURTROOM DEPUTY: Hold on a second.

9 (Pause in proceedings. Juror Number █ attending via
10 videoconference.)

11 THE COURT: Is this Juror Number █?

12 Ma'am, this is Judge Cole. We don't see you on
13 screen right now. Do you have a camera you could turn on on
14 your end?

15 JUROR NUMBER █: Yeah. Hold on.

16 (Pause in proceedings.)

17 THE COURT: I think you just need to turn on your
18 camera.

19 JUROR NUMBER █: Hold on one second.

20 (Pause in proceedings.)

21 THE COURT: Very good. Ma'am, can you hear me?

22 JUROR NUMBER █: Yes.

23 THE COURT: And just to confirm, ma'am, you are Juror
24 Number █ from the Sittenfeld trial; is that right?

25 JUROR NUMBER █: Yes.

1 THE COURT: Okay. I appreciate your willingness to
2 appear via videoconference this morning, and I'd just like to
3 say at the outset -- I want to make it very clear to you. You
4 are not in any way in any trouble. There is nothing about
5 you. You were just sort of selected kind of a little bit at
6 random with regard to some additional questions about what
7 went on in the jury room. In particular, I'm going to allow
8 the parties to ask you questions in a little bit, but the
9 questions are going to be directed at the extent to which, if
10 any, that extraneous information, in other words, information
11 from outside the Court, became part of the deliberations among
12 the jury.

13 So, for example, they might ask: Oh, did anyone say
14 "I heard this on the radio" or "I read this in the newspaper"
15 and try to interject facts that were not facts that were
16 presented in court?

17 That's generally going to be the nature of the
18 conversation this morning. Do you understand that, ma'am?

19 JUROR NUMBER █: Yes.

20 THE COURT: Okay. Well, what I'd like to do is swear
21 you in, if I could do that?

22 So Scott, could you take care of that, please?

23 COURTROOM DEPUTY: Yes.

24 (Juror Number █ was duly sworn by the courtroom deputy.)

25 JUROR NUMBER █: Yes.

1 COURTROOM DEPUTY: Thank you.

2 THE COURT: So Juror Number █, Mr. Rittgers is going
3 to start with some questions on behalf of Mr. Sittenfeld, and
4 then the government may have some follow-up questions as well.

5 So Mr. Rittgers, you may proceed.

6 MR. RITTGERS: Thank you, Your Honor.

7 EXAMINATION

8 BY MR. RITTGERS:

9 Q. Good morning. My name is Charlie. Obviously, we know
10 each other from the trial. As Judge Cole indicated, you're
11 not in trouble at all. And, in fact, we asked if we could
12 speak with you because we thought you might be extremely
13 honest. So that's why you're here and I guess what you get
14 for us thinking that you're going to be really honest with us.
15 So thank you very much for appearing.

16 Are you aware of any -- and you're permitted, as the judge
17 told you after the verdict, since the verdict came out, you
18 and other jurors are permitted to have looked at media and
19 news media since the verdict came out. There have been some
20 news articles, although I'm not sure to the extent at which
21 they've talked about detail about one of the jurors, Juror
22 Number -- well, a juror making comments about other jurors.

23 Are you aware of any of that on the social media?

24 A. Yes and no. I know that, um, Juror █, when she was
25 discharged for us to go in for deliberations, she had said she

1 would be the one doing that if they -- you know, she wanted to
2 switch with somebody, and she picked me, and I said no. So
3 she could be part of that. She says, "Well, if I get" -- you
4 know, because she's █, she would put it on Facebook and
5 whatever. That's the only thing I remember. But that wasn't
6 back in the deliberation room. That was back in the room.

7 Q. And so Juror █ -- if you remember the courtroom, if you
8 were facing that jury box, were --

9 So I know that we're referring to the same juror, █

10 █?

11 A. █.

12 Q. And so that Juror █ if I recall correctly, she was not
13 part of the deliberations, right?

14 A. No, she was not.

15 Q. The jury room, I believe it was on the 9th floor?

16 A. Yes.

17 Q. Is that -- so Juror █, she was talking with you and
18 presumably other jurors in the jury room before the
19 deliberations talking about how she wanted to be able to go on
20 social media?

21 A. No. She was upset that she was Juror █ and she wasn't
22 going to be able to go back and deliberate. So she was upset
23 about that, and she says, "Well, if I have to go after sitting
24 through all this, and I have a voice, I'll put it out there"
25 type thing.

1 Q. Gotcha. Gotcha. One of the jurors posted comments on
2 Facebook during the trial, and some of the comments on her
3 Facebook posts referenced P.G. Sittenfeld. And she also made
4 comments like "I wish this person's tongue would fall out,"
5 speaking about another juror.

6 A. Oh.

7 Q. Yeah. Were you aware of any of that?

8 A. No.

9 Q. It was --

10 MR. RITTGERS: Your Honor, may I describe to her the
11 juror so that I can have a conversation whether or not she
12 knows if that juror was on the phone during deliberations or
13 during trial?

14 THE COURT: Yes.

15 Q. This juror would have been [REDACTED]

16 [REDACTED].

17 A. Hold on. Okay. Female?

18 Q. Yes.

19 A. Okay.

20 Q. And she made -- one of the reasons why we asked to speak
21 with you, she made some comments about you, and so we wanted
22 to know from you if you had seen her on her phone during
23 deliberations or if she had -- she was interacting with people
24 on Facebook from the beginning of the trial. Some people even
25 posted, like, a *cincinnati.com* article on her Comments after

1 she had checked in at the federal courthouse.

2 So what we're wondering is if she mentioned to anyone,
3 that you're aware of, things that she had heard, like, through
4 the news or speaking to someone at her house. Can you tell --

5 A. Um, no. She wouldn't have said anything for me to hear
6 after she brought to my attention I had ADD, and I just
7 laughed it off. I'm not shocked, let me put it that way. But
8 no, I didn't hear it.

9 Q. Did you see her on her phone during the deliberations? Do
10 you remember her getting on --

11 A. Yeah. I seen her on it, but I don't know what she was
12 doing on it.

13 Q. So during the deliberations, she was on her phone at times
14 while you were deliberating?

15 A. Mm-hmm.

16 THE COURT: Is that a yes, ma'am?

17 JUROR NUMBER █: Yes. I'm sorry.

18 Q. And we're talking about the juror █

19 ██████████?

20 A. Yes. █?

21 Q. I believe that's correct.

22 A. Mm-hmm.

23 Q. And so when we -- and I apologize for belaboring this, but
24 when you say she was on her phone, she actively had her phone
25 out while you all were deliberating about a verdict in the

1 jury room?

2 A. Yes. She had her phone out towards the end. I don't know
3 what she was doing or who she was talking to, but she actually
4 was in a hurry to get it done, I think, the way she portrayed.
5 And I was sitting fairly close to her.

6 Q. One of her comments on Facebook said something how about
7 she was so glad that it was the weekend. And I believe the
8 verdict came out on a Friday. Did she make any comments about
9 something that she wanted to do on the weekend or someone she
10 had talked to that she had plans with?

11 MS. GLATFELTER: Your Honor, I'm going to object.

12 THE COURT: It's sustained.

13 JUROR NUMBER █: I don't --

14 THE COURT: Ma'am, you don't need to answer that
15 question.

16 Q. Would the juror █, the one that we're
17 talking about, or any other jurors, to your knowledge, would
18 they talk about other jurors? Did you hear anything where
19 there was --

20 MS. GLATFELTER: Objection, Your Honor. It's not
21 relevant as to whether they're talking about other jurors.

22 THE COURT: Sustained.

23 Mr. Rittgers, the purpose of this examination is to
24 allow you to inquire whether any extraneous information from
25 media sources, for example, became part of the jury

1 deliberations, and I'd ask you to limit your questions to
2 those topics.

3 MR. RITTGERS: Thank you.

4 Q. As I mentioned earlier, we have some information from the
5 Facebook posts from that juror [REDACTED] that
6 people had commented on her page, and at least one comment was
7 a *cincinnati.com* article link. Did that juror, [REDACTED]
8 [REDACTED], did she ever mention to you any article that she
9 had read or a news story that she had heard about?

10 A. No.

11 Q. Did any juror -- not just -- I'm not just limiting this to
12 the woman to your left. And you don't have to name the
13 particular juror. But was there any commentary about things
14 that were read, news articles, television media or newspapers,
15 about the Sittenfeld trial?

16 A. No. Um, no. The only thing close to it is -- maybe I
17 shouldn't mention it. Um, no, she didn't. But yeah, she was
18 on her phone.

19 Q. What was close to it? I mean, you can -- that's why
20 you're here, is to be -- the only -- there's -- you can't get
21 in trouble for anything, nor can another juror, for what you
22 tell us. The only thing that could happen is if P.G. could
23 get a new trial. So we're just here for brutal honesty.

24 So what would be close to that?

25 A. One of the ladies could not make her mind up. I mean, she

1 was on the fence from when she finally --

2 MS. GLATFELTER: Your Honor, I'm going to object --

3 THE COURT: Yes.

4 Hang on one second, ma'am. So I want to explain
5 something to you, ma'am. We're not inquiring into the way in
6 which deliberations proceeded or what anyone said about
7 whether the verdict should be guilty or not guilty or anything
8 of that nature. The only question is whether people in the
9 jury room were discussing information about this case that was
10 not presented at trial.

11 So, for example, if someone were to say, "Well, I
12 don't know what they might have said at trial, but what I read
13 in the newspaper last night was that the real facts are this,"
14 something like that would be information that we would like to
15 know.

16 Other than that, the reasons people were voting one
17 way or another or whether they didn't want to do this or
18 didn't want to do that, we're not asking you about that at
19 all.

20 Does that make sense, ma'am?

21 JUROR NUMBER █: Yes.

22 THE COURT: Okay. So now Mr. Rittgers can re-ask his
23 question, but he's only attempting to ask you whether people
24 were referring to information that was not presented in this
25 courtroom and instead was presented -- or they tried to

1 interject it based on things they heard outside of the
2 courtroom.

3 So go ahead, Mr. Rittgers.

4 Q. So it doesn't have to -- as the judge said, it doesn't
5 have to be media accounts, though. It could be "I was talking
6 to my spouse" or "I was talking to a friend at Starbucks." It
7 can be anything like that. And if it influenced the reason
8 why they voted, that's why we're here, is to talk about that.

9 Can you tell us that?

10 A. Yeah. Like I said, I knew she was on her phone. I didn't
11 hold on conversations with her much at all, but she did -- you
12 know, she -- that's all I really know, is she was on her
13 phone.

14 Q. And I believe you were talking about another juror, [REDACTED]
15 [REDACTED], who was having a tough time coming
16 to a decision. And again, nothing that changed her mind about
17 something that she heard in the courtroom, the juror -- I
18 think we're talking about a third juror now who was having a
19 tough time coming to a decision?

20 A. Uh-huh.

21 Q. Did she mention something that might have influenced her
22 from outside the courtroom? Anything?

23 A. No, I don't believe so.

24 Q. You recall during trial the stairway that you would go up
25 and down from the 9th to the 8th floor?

1 A. Yes.

2 Q. And there was a bathroom in that -- next to that
3 stairwell?

4 A. Yes.

5 Q. And then sometimes you and other jurors would line up in
6 that hallway leading into the courtroom?

7 A. Yes.

8 Q. On breaks, I believe a lot of the female jurors and male
9 jurors, they would use the bathrooms on the 8th floor? Do you
10 remember that?

11 A. No -- oh, well, I guess. I don't believe -- we used the
12 one up to the 9th, a lot of us, so...

13 Q. Do you remember hearing people like the press in the
14 hallway talking about their interpretation of the witness
15 testimony while you were standing in the hallway with other
16 jurors?

17 A. Yeah.

18 Q. And so --

19 A. Not, I mean --

20 Q. I'm sorry to interrupt you. Go ahead.

21 A. No. I said yeah, I heard them. I didn't pay much
22 attention to it. I just tried to shut it down on my end.

23 Q. But you were aware at the time during the trial as you
24 were standing in the hallway that people from the press were
25 interpreting their opinions about what they heard from the

1 witness stand in your presence and other jurors' presence?

2 A. Yes. They were usually talking on the phone.

3 Q. And did you use the 8th floor bathroom at all? You were
4 allowed to. I'm just asking because it came to mind.

5 A. One time, I think.

6 Q. And in there, did you hear people --

7 A. You say I can't --

8 Q. Go ahead. I'm sorry.

9 A. No, not in the bathroom, I did not. I would hear them
10 coming around the corner because I'd be standing -- I went
11 down fairly early, and I would be standing there.

12 Q. Do you remember approximately where you would line up in
13 terms of how -- you would have been the [REDACTED],
14 right?

15 A. I was [REDACTED].

16 Q. [REDACTED]?

17 A. Yes.

18 Q. And would you remember if I showed you pictures of what
19 some of those people looked like who were commenting about how
20 they interpreted the facts in the courtroom when you were in
21 the hallway?

22 A. I might, but I wouldn't swear to it because --

23 MS. GLATFELTER: Your Honor --

24 A. -- I kind of ignored them.

25 MS. GLATFELTER: -- I'm going to object to far

1 outside the scope of this particular hearing. We're supposed
2 to be focused on what happened during the deliberation
3 process. Now we're talking and we're introducing pictures of
4 possible media people in the hallway during trial? This is
5 far afield.

6 THE COURT: Well, it does go to, at least as
7 Mr. Rittgers has set it up, as to whether there may have been
8 some commentary that the jurors heard outside the walls of the
9 courtroom, so I'm going to allow him some latitude here.

10 MR. RITTGERS: Thank you.

11 Q. Without having to go into specific details about what you
12 heard from folks in the hallway who were either talking to
13 each other or on their cell phones, do you recall that
14 happening almost every day when you all were lined up in the
15 hallway?

16 A. No, not every day. It was -- usually, it was in the days
17 that we were waiting and they were trying to get into the
18 courtroom but wanting to talk on their phones to somebody
19 prior to going in, so....

20 But, like I said, I knew what they were talking about. I
21 just didn't pay attention to what they were saying. I
22 couldn't tell you.

23 Q. Okay. But you do recall that it was their interpretation
24 of what they had heard in the courtroom?

25 A. Yeah. And I remember Scott one time pushed them, and he

1 had them go back away from us because they were all right
2 there in the front where the men's room was. He came out and
3 told them "No, you got to go down a way."

4 Q. Do you recall anyone being interviewed? There are a
5 couple of people that have indicated to us that there were
6 actual interviews of pundits, like talking heads, by the press
7 near you all while you were lined up.

8 A. No, I don't.

9 Q. Did any of the -- I believe the woman [REDACTED]
10 would meet with --

11 A. Yeah.

12 Q. Number [REDACTED] would meet with Number [REDACTED], and those two would
13 text each other, Number [REDACTED] and Number [REDACTED].

14 A. Prob -- I didn't know they were texting each other. I
15 knew people were on the phone, but...

16 Q. And I don't know what they were doing in the -- I mean,
17 they would text each other and, like, meet at Starbucks before
18 the day started.

19 A. Right, but --

20 Q. Are you aware of any jurors having each other's cell
21 phones aside from Number [REDACTED] and Number [REDACTED], just cell phone
22 numbers?

23 A. No, I didn't -- like I said, I was up there beside her in
24 our break room or whatever, and that's when I see her bringing
25 her phone out as soon as she walked out of there. But what

1 she was doing, I didn't know.

2 Q. Was there a spot -- did you leave your phone somewhere
3 during the deliberations before you were going in, you
4 personally?

5 A. Oh, me personally? I turned it off when I entered the
6 courtroom -- I mean the courthouse until time to leave and I'd
7 turn it back on.

8 Q. Could you tell if Juror Number █'s phone was on during the
9 deliberations?

10 A. No, not for sure.

11 Q. It just looked like she was reading it, from what you
12 could tell?

13 A. That was my -- during deliberations? Yeah, she was back
14 there reading it. She was on her phone.

15 Q. Reading something, and you're just not sure what?

16 A. Yeah, I don't know. Right.

17 Q. Did she or anyone else mention "Hey, I was talking to
18 so-and-so and, you know, this is why I think our verdict
19 should be X"?

20 A. No. I mean, not from --

21 Q. Go ahead.

22 A. Not that I heard.

23 Q. Is there anything that would lead you to believe that
24 someone was on social media or reviewing news articles about
25 the case at any point? It doesn't have to be in the

1 deliberation room, but while you were, like, waiting in the
2 break room or had the pizza lunch?

3 A. No. No. I never -- if they did, they did it very well
4 without me knowing it.

5 Q. [REDACTED], she said
6 something about one of the jurors being extremely biased
7 against people who were of the same profession as P.G.

8 Was there comments about how that -- how people outside of
9 the 16 of you, or 12 of you, would believe the verdict, what
10 the verdict should be?

11 MS. GLATFELTER: Your Honor, I'm going to object to
12 the process of deliberations and this being outside the scope
13 of this particular hearing.

14 THE COURT: Yeah, I'm going to sustain that. And
15 I'll add, I don't even understand what the question was, so...

16 But it's sustained.

17 Q. Knowing that I represent P.G. and in my position, is there
18 anything that you think would be important for me to know as I
19 sit here today?

20 THE COURT: About extraneous information in the jury
21 room.

22 A. No, that I can think of.

23 Q. Were there other --

24 A. I know --

25 Q. Go ahead. I'm sorry. I keep interrupting.

1 A. [REDACTED] might know more, the other juror. I kind of stayed
2 to myself.

3 Q. [REDACTED]?

4 A. Yeah. Wait, wait. I was thinking the other -- yeah,
5 [REDACTED].

6 Q. Okay.

7 A. She might know.

8 Q. Have you talked to [REDACTED] after the verdict?

9 A. I talked to no jurors after the verdict. I work in a
10 medical building. I kept up with them by knowing their number
11 instead of their name on all of them just about, except
12 [REDACTED].

13 Q. Is there a reason why you think [REDACTED] might
14 know about Number [REDACTED]?

15 A. Um, yeah. They were closer together. Like, they would
16 stand, one room -- we had two rooms, one where [REDACTED] sat,
17 and then down the hall we -- another one. So people were
18 split up there. So her and [REDACTED] would go down to that one,
19 where most of them usually went to the other one or that one
20 that --

21 Q. Did you ever hear from Number [REDACTED] about her thoughts about
22 what the verdict should be before the deliberations?

23 A. No.

24 MR. RITTGERS: May I have one moment, Your Honor?

25 THE COURT: You may.

1 (Pause in proceedings.)

2 MR. RITTGERS: I have no further questions, Your
3 Honor.

4 THE COURT: Thank you, Mr. Rittgers.

5 Does the government have any questions for this
6 witness?

7 MS. GAFFNEY PAINTER: Briefly, Your Honor.

8 THE COURT: You may.

9 MR. RITTGERS: Thank you.

10 THE COURT: Thank you.

11 EXAMINATION

12 BY MS. GAFFNEY PAINTER:

13 Q. Good afternoon. As you know, I'm Megan Gaffney Painter,
14 and I represented the United States at the trial. I just have
15 a few questions for you.

16 So you mentioned seeing Juror Number █ on her phone during
17 deliberations; is that right?

18 A. No, not -- you mean back in the room? Yes.

19 Q. Let's separate out during breaks versus during
20 deliberations. When you and the other jurors were
21 deliberating -- and, again, we don't want to know anything
22 that was said -- did you see Juror Number █ on her phone
23 during the deliberations?

24 A. Yes.

25 Q. Did you ever see what was displayed on Juror Number █'s

1 phone during deliberations?

2 A. No.

3 Q. Did Juror Number █ reference any conversations she had had
4 with others outside of the courtroom about the case at any
5 point?

6 A. No.

7 Q. And Juror Number █ did not reference any conversations she
8 had with anyone else about the case during deliberations; is
9 that right?

10 A. Right.

11 Q. Did Juror Number █ during deliberations reference any news
12 articles she had read about the case?

13 A. Not that I can recall.

14 Q. Did Juror Number █ reference during deliberations any
15 research she had done about the case outside of the courtroom?

16 A. Not that I recall.

17 Q. Now, you mentioned that you had heard some media comments
18 in the hallway when you were lined up to return to the
19 courtroom. Did anything that you heard from those members of
20 the media affect your assessment of the evidence in this case?

21 A. No.

22 Q. Did you tell any of the other jurors what you heard the
23 members of the media say in the hallway?

24 A. No.

25 Q. Throughout the course of this trial but especially during

1 deliberations, did you follow the Court's instructions?

2 A. Yes.

3 MS. GAFFNEY PAINTER: May I have just a moment, Your
4 Honor?

5 THE COURT: You may.

6 (Pause in proceedings.)

7 MS. GAFFNEY PAINTER: One additional question.

8 Q. Did any of the other jurors discuss what they had heard
9 the media say in the hallway during deliberations?

10 A. Not with me, no.

11 MS. GAFFNEY PAINTER: No further questions, Your
12 Honor. Thank you.

13 THE COURT: Thank you.

14 Mr. Rittgers?

15 MR. RITTGERS: Very briefly, Your Honor.

16 EXAMINATION

17 BY MR. RITTGERS:

18 Q. The prosecutor mentioned that -- asked you about what
19 other jurors I believe had -- if they said anything about the
20 media in the hallway. I believe you told us that you were
21 [REDACTED] to come into the courtroom?

22 A. Yes.

23 Q. There were other jurors that were in much closer earshot
24 than yourself to those conversations that were being had; is
25 that correct?

1 A. Yes, probably.

2 Q. And that happened on more than one occasion, that you
3 heard people speaking about their interpretations of what went
4 on in the courtroom while you were in the hallway?

5 A. Yes.

6 Q. The prosecutor asked you a question about if other jurors
7 had mentioned something that they had heard. That was one of
8 the questions, I believe. I get the sense that there might
9 have -- from your answer, that there might have been, kind of,
10 factions of people speaking on their own in deliberations
11 without the whole group or outside of deliberation room? I'm
12 talking about jurors.

13 MS. GLATFELTER: Objection, Your Honor.

14 THE COURT: Sustained.

15 Ma'am, you don't need to answer that question.

16 Q. Is there anything that you want to add based on the
17 prosecutor's questions to you?

18 A. Not that I can think of.

19 Q. Thank --

20 A. Back in the deliberation room, we, um --

21 THE COURT: Ma'am, before you say anything further, I
22 don't want you to talk about the process of deliberations, in
23 other words, you know, how it went or what you felt about
24 other jurors or how you thought the process was going. The
25 questions are strictly limited to whether there was extraneous

1 information that was interjected into the deliberations. So
2 other than references to news articles or conversations that
3 people had with people that, you know, were outside the
4 courtroom, things like that, that's all we're asking you
5 about. So I'd ask you not to comment on the deliberations
6 beyond that. Do you understand that, ma'am?

7 JUROR NUMBER █: Yes.

8 THE COURT: Okay.

9 Go ahead, Mr. Rittgers.

10 Q. With what the judge just indicated, is there something
11 that you would like to say within those bounds?

12 A. No.

13 MR. RITTEGRERS: No further questions, Your Honor.

14 THE COURT: Thank you.

15 And ma'am, I think we're done. The only thing I
16 would note is that, at least for the time being, this is
17 what's called an *in camera* proceeding, which means that this
18 is sealed. It may be unsealed at a certain point, so you may
19 see media account references to this down the road. But at
20 least for the time being, I'd ask you not to discuss the
21 contents of this hearing with anyone else unless and until you
22 hear it's been unsealed. All right?

23 JUROR NUMBER █: Yes.

24 THE COURT: Thank you very much. And thank you
25 again, ma'am, for your willingness to participate. I will

1 tell you, typically this -- you know, once you're done with
2 the jury deliberations, typically you're done in the case. I
3 apologize that it didn't work out that way this time, but I do
4 appreciate your willingness to appear here today. So thank
5 you very much.

6 JUROR NUMBER █: You're welcome.

7 THE COURT: Very good. All right. Bye-bye.

8 JUROR NUMBER █: Bye.

9 THE COURT: All right. So are you turning off the
10 videoconference?

11 COURTROOM DEPUTY: Yes.

12 THE COURT: Okay. I just -- so it's still displayed
13 on the screen there.

14 (The videoconference concluded at 12:16 p.m.)

15 THE COURT: Okay. Let's bring in the next juror.

16 And Mr. Rittgers, I would just say, you know, I
17 appreciate you trying to probe the edges, but I'm trying to be
18 pretty adamant about the limitation that I imposed in the
19 order, and I'm going to continue to be fairly insistent about
20 observing that boundary. It's not directed at you personally.
21 I understand you're representing a client, but I've sort of
22 ruled what I ruled, and I'm not revisiting that at this point.

23 MR. RITTGERS: I understand, Your Honor. Thank you.

24 THE COURT: Thank you.

25 (Pause in proceedings. Juror Number █ entered the courtroom

1 at 12:20 p.m.)

2 THE COURT: You can just follow Scott over here.

3 COURTROOM DEPUTY: If you'll just stop there and
4 raise your right hand? Your right hand.

5 JUROR NUMBER █: Oh, God.

6 (Juror Number █ was duly sworn by the courtroom deputy.)

7 JUROR NUMBER █: Yes.

8 COURTROOM DEPUTY: Have a seat up there, please.

9 THE COURT: You may be seated. Good morning, ma'am.

10 JUROR NUMBER █: Good morning.

11 THE COURT: Am I correct that you were Juror Number █
12 in the Sittenfeld matter?

13 JUROR NUMBER █: Yes.

14 THE COURT: Okay. And there's going to be a few
15 questions for you this morning, but I want to just start by
16 saying something. First of all, it's very unusual to have a
17 proceeding at which jurors come and testify after a trial.
18 It's just not typically something that happens. Something
19 sort of odd happened in this case, and there were some
20 comments by one of the jurors on social media during the
21 course of the trial, and so that's led to some questions about
22 whether or not extraneous information may have been introduced
23 during deliberations.

24 And what I mean by extraneous information would be
25 information about this case that didn't come from inside the

1 four walls of the courtroom, but somebody saying "I don't
2 know, I read in the newspaper last night" or "I don't know, I
3 heard a television story about this case that this happened or
4 that happened." So it's information that didn't come from the
5 witness stand that somehow nonetheless became part of jury
6 deliberations.

7 So the reason that you're here this afternoon, with
8 sincere appreciation from the Court, is to allow the parties
9 to ask you questions about that topic and that topic alone.
10 And I want to tell you going in, there's no indication that
11 you're in any kind of trouble, you can't be in any kind of
12 trouble based on your testimony that you give today. This is
13 just strictly to try to figure out whether or not outside
14 information somehow made its way into the jury deliberations.
15 That's the only thing that I'm going to allow the attorneys to
16 ask you questions about.

17 They're not asking you questions about why you voted
18 one way or another or why anybody else voted one way or
19 another or what the deliberations were or anything like that.
20 It's only about whether outside information may have made its
21 way into the jury room.

22 Do you understand what I'm saying?

23 JUROR NUMBER █: Yes.

24 THE COURT: Okay.

25 So with that, Mr. Rittgers, you may begin.

1 MR. RITTGERS: Thank you, Your Honor.

2 EXAMINATION

3 BY MR. RITTGERS:

4 Q. Thanks for coming in. As the judge indicated, you're not
5 in trouble at all. Randomly, we picked two jurors just to
6 talk to as opposed to --

7 A. You randomly picked two jurors?

8 Q. We got the choice. So, as I told the other juror, we
9 picked two people that we thought might be really honest. And
10 to be very honest with you, we already spoke with Juror Number
11 █ who indicated that she and you had each other's cell phones.
12 So that's why you're one of the two that we picked to get to
13 talk to.

14 Are you aware about any of the social media posts that she
15 had been posting during the trial? Juror Number █?

16 A. Clarify that.

17 Q. She -- there was some -- on Facebook, Juror Number █, who
18 would have been seated █ posted some things
19 on Facebook. She would check into the courthouse during
20 deliberations, talk about the fact that she was seated as
21 Juror Number █, said some things like she wished Juror Number
22 █'s tongue would fall out, Juror Number █ didn't know about,
23 you know, comfortable silence. She made some references to a
24 few other jurors -- I forget exactly -- someone about having a
25 bias against politicians essentially, and a few other things.

1 So she was on Facebook commenting, which is why we now are
2 doing some inquiries. And we've talked to her -- Juror Number
3 █ -- briefly. She indicated that she and you had each other's
4 cell phones. So that's one of the reasons why we picked you
5 just to talk to you.

6 As long as you're honest today, there's absolutely nothing

7 --

8 A. Oh, I'm going to be honest. But I want to explain
9 something.

10 Q. Yeah.

11 A. The only reason she had my cell phone and I had hers was
12 because we met for coffee at Starbucks. That was it. I know
13 better than to do anything like that. I don't have any social
14 media, never had social media, never had Facebook. I don't do
15 that. That's just not who I am or my character.

16 Now, what I do know is she mentioned --

17 Did I see it? No.

18 She mentioned that she had a Facebook and something about
19 a tongue falling out. I don't know. That's all I remember.
20 That's not something I focused on. That's the honest truth.

21 Q. When did she mention that?

22 A. This was early on, I think, very early on. But it had
23 nothing to do with the trial, per se, not that I know of
24 anyway.

25 Q. When you say she mentioned that, she mentioned that she

1 said something about a juror's -- wanting a juror's tongue to
2 fall out to you while you all were seated during the trial?

3 A. Not during the trial. We were upstairs in the lunchroom.

4 Q. I apologize. Not in the courtroom, but during the time
5 when we were having the trial.

6 A. Yes.

7 Q. Is that fair?

8 A. Yeah, yeah. But she didn't say it directly to me. She's
9 sitting here, I'm sitting here, and this other fellow is
10 sitting here, the other two gals are here. She just said it.
11 So it wasn't directed at me, per se. It was just -- she just
12 said it.

13 Q. She said that she was posting something about it?

14 A. No. She said -- she was on her phone, and she had said
15 about her tongue falling out, or something like that. She had
16 said that. But it wasn't directed at anybody. It was just
17 she said it, sitting there on her phone.

18 Q. Gotcha. There is a Court -- not Judge Cole. There is an
19 opportunity potentially that there might be a download of a
20 cell phone, and you can see deleted things on a cell phone,
21 not on yours --

22 MS. GLATFELTER: Objection, Your Honor. This is not
23 relevant for this witness in terms of explaining to her what
24 other things may happen.

25 THE COURT: Where are you going with this,

1 Mr. Rittgers?

2 MR. RITTLERS: Well, I'm just letting her know the
3 basis for future questions to her and honesty and how that --

4 JUROR NUMBER █: What future questions? I have
5 nothing to hide. What -- what am I here for? I have nothing
6 to hide.

7 Q. Yeah. So during the deliberations, and that's in the room
8 when you guys are talking about the verdict, there -- we are
9 asking if anyone mentioned anything about "I was talking to my
10 spouse last night" or "I read something on the news." Because
11 one of the comments on Juror Number █'s Facebook post about
12 this was a *cincinnati.com* link.

13 A. I don't know anything about any of that.

14 Q. I know you're not on social media, but did she ever
15 mention anything? Or did anyone ever say --

16 A. Oh, no, no, no, no. Not to me, no. Not to me.

17 Q. Were there conversations that she was having with others
18 where you weren't privy to them?

19 A. I don't know. To be honest, I don't know. There was
20 always -- went to lunch, there was always four or five of us.
21 We didn't talk about really anything. Family? I mean, no,
22 not that I'm aware of, not that I can sit and say yes. No, I
23 can't.

24 Q. Did people talk about the media presence?

25 A. Outside?

1 Q. Yeah.

2 A. A little bit.

3 Q. Can you tell us about that?

4 A. Um, okay. Let me think. That Melvin -- wait a minute.

5 He's on Channel 9. He was always outside.

6 Q. A male reporter?

7 A. Male reporter. I can't think of his name, but I said,
8 "Oh, my God, he's on Channel 9, I've seen him before" when he
9 was walking through and he was outside when we come out for
10 lunch that one time. That was about it. Is that what you're
11 asking?

12 Q. Sort of. I mean, did you hear them talking when you all
13 were lined up in the hallway about their interpretation of
14 what was going on in the courtroom?

15 A. No.

16 Q. Okay. You were aware that they were in the same hallway
17 as you, right?

18 A. A few times. A few times. Not always. Are you talking
19 about when we was lined up?

20 Q. Yeah.

21 A. They weren't always there. They would walk back and
22 forth.

23 Q. And they were sometimes on the phone talking about their
24 interpretation of what was happening in the courtroom?

25 A. Who?

1 Q. The news media --

2 A. The jurors or the media?

3 Q. Media or even non-media, people that weren't jurors, in
4 your presence.

5 A. Not sure about conversations on phones or anything like
6 that, to be honest with you. I don't know.

7 Q. Okay.

8 A. Am I supposed to have heard something? Because I -- I
9 don't remember. I didn't have my phone out in the hallway.

10 Q. Yeah. I'm not asking if you were on your phone. I'm
11 asking about what you heard when you were waiting in the
12 hallway about people's interpretations about what happened in
13 the courtroom.

14 A. Nothing comes to mind, to be honest. I really don't
15 remember. I don't -- nothing comes to mind. Must not have
16 been that important or I would remember it.

17 Q. Okay. So you don't even remember seeing people in the
18 hallway very frequently while you were lined up there?

19 A. There was people walking back and forth here and there.

20 Q. Okay. But you don't remember hearing anything?

21 A. Hearing?

22 Q. Their conversations.

23 A. Not really, nothing -- I mean, no. I mean, I'm sure
24 people were talking, but I don't remember a certain
25 conversation or anything.

1 Q. How about in the bathroom on the 8th floor? When that
2 would be used by you or other jurors, did you hear comments in
3 there?

4 A. On the 8th floor?

5 Q. This bathroom right here outside the courtroom.

6 A. Nothing comes to mind, to be honest with you. Nothing
7 sticks out in my mind.

8 Q. Do you recall using that bathroom right outside this
9 courtroom?

10 A. Down the hall to the left?

11 Q. Yeah.

12 A. Yes.

13 Q. And there were other people in the bathroom, not just
14 jurors, correct?

15 A. Gosh, I don't remember. To be honest, I do not remember
16 that. I don't recall that, no. I do not remember that. I
17 think one juror and I went in there, but I couldn't even tell
18 you who that was.

19 Q. How many text messages do you think you have on your phone
20 with Juror Number █, if we were to receive that phone?

21 A. Two, three, tops.

22 Q. Just two or three?

23 A. Yeah.

24 Q. Okay. And in those text messages, what you're telling us
25 today in sworn testimony is that there would be nothing about

1 the trial in those text messages?

2 A. No. You can see them right now. No, absolutely not.

3 MR. RITTGERS: Would the Court permit?

4 THE COURT: No.

5 I mean, you don't mind, ma'am?

6 JUROR NUMBER ■: This is a company phone, first off.

7 But I can swear to you -- no. We talked about meeting at

8 Starbucks. That is it. That's it. There is nothing that I

9 have, not --

10 MS. GLATFELTER: Your Honor, part of our responses,
11 part of our discussion here has been juror privacy.

12 THE COURT: Right.

13 MS. GLATFELTER: She has sworn she's had messages
14 about Starbucks. That's it. I don't think we need to subject
15 her to looking through her phone for text messages for this
16 inquiry.

17 THE COURT: Yeah.

18 I don't think we need to, ma'am. If you're -- if you
19 don't -- if it doesn't bother you at all and it's just a few
20 text messages and you wouldn't mind showing them to
21 Mr. Rittgers, but I don't want you to feel that you have to,
22 because you definitely do not have to.

23 JUROR NUMBER ■: I don't have to, I don't have to,
24 but I can assure you that -- seriously, that's all it was. I
25 was, like, ten minutes late. We were supposed to meet at,

1 like, eight o'clock or something. I was, like, "I'm running
2 ten minutes late," or something like that. "No worries."
3 Nothing about the trial. I guaranty it, guaranty it. No.
4 That's not who I am. No.

5 Q. Have you spoken with Juror Number █ since the verdict?

6 A. Number █? Yes -- since -- after the verdict?

7 Q. Yeah.

8 A. Yes, once.

9 Q. Was it about her social media posts?

10 A. No. Actually, I take that back. It was twice. She come
11 out -- I was on my way home, and I guess she and another juror
12 was here. She was walking to her car, and she had called.
13 She said, "Oh, my God. The judge talked to me."

14 I said, "Well, what about? Are you in trouble?"

15 And she said, "I don't know." She said, "I think it's
16 about my Facebook."

17 And, to be honest with you, I don't remember what else.
18 It was cut very, very short.

19 MR. RITTLERS: Your Honor, may I have one moment?

20 THE COURT: You may.

21 JUROR NUMBER █: But there was nothing else about
22 that.

23 (Pause in proceedings.)

24 JUROR NUMBER █: I don't remember any of these
25 conversations, for God's sake. This is the least thing on my

1 mind.

2 (Pause in proceedings.)

3 (By Mr. Rittgers)

4 Q. I assume you liked Juror Number █?

5 A. Yes. She seemed like a good gal.

6 MS. GLATFELTER: Your Honor, I'm going to object to
7 the relevance.

8 THE COURT: Yeah. Where are we going with this,
9 Mr. Rittgers?

10 MR. RITTGERS: Just a little bit of leeway just to
11 ask a couple of questions, or I can move on.

12 MS. GLATFELTER: Mr. Rittgers has had a lot of leeway
13 today.

14 MR. RITTGERS: May I ask a question, Your Honor?

15 THE COURT: You may ask a question, Mr. Rittgers.

16 Q. Ma'am, did you see Juror Number █ on her phone during the
17 deliberations?

18 A. During deliberations?

19 Q. Yeah.

20 A. I don't believe so, but I wasn't watching her the whole
21 time. I was not watching her the whole time.

22 MR. RITTGERS: I have no further questions, Your
23 Honor.

24 THE COURT: Thank you, Mr. Rittgers.

25 MS. GAFFNEY PAINTER: Briefly, Your Honor, if I may?

1 THE COURT: You may.

2 EXAMINATION

3 BY MS. GAFFNEY PAINTER:

4 Q. I'm Megan Gaffney Painter. I represented the United
5 States at trial, as you know. I just have one or two
6 questions for you.

7 A. Sure.

8 Q. During the deliberations, did any juror reference or speak
9 about anything outside of the courtroom: a conversation with
10 someone about the case, a news article, research they had done
11 on the internet, anything outside of what was presented in the
12 courtroom?

13 A. I don't think so. I don't -- I wasn't approached with it,
14 let's put it that way. I really can't say. I don't -- I
15 don't think so. I don't remember anything like that. Nothing
16 sticks out in my mind. No.

17 MS. GAFFNEY PAINTER: No further questions, Your
18 Honor.

19 THE COURT: Thank you.

20 MR. RITTGERS: No further questions, Your Honor.

21 THE COURT: Very good.

22 Ma'am, well, thank you for coming in. I do want to
23 again tell you that I apologize that your jury duty extended
24 beyond the confines of just deliberating and returning a
25 verdict. The Court very much appreciates your service. The

1 Court appreciates your willingness to appear today. This is
2 very unusual. It was unfortunately a result, as Mr. Rittgers
3 said, of some social media posts that one of the jurors did
4 during trial. It's just incumbent upon us to try to
5 investigate that a little bit to see if there was any external
6 influence on the verdict. That was the only reason you're
7 here today. So it had nothing to do with your service. It's
8 not designed to reflect on you in any way. We just needed
9 that additional information. But I very much appreciate you
10 coming here this afternoon.

11 JUROR NUMBER █: Thank you.

12 COURTROOM DEPUTY: Admonish?

13 THE COURT: Oh, ma'am, one other thing. At least for
14 right now, this hearing being conducted is what's called *in*
15 *camera*, which means -- as you see, the court is empty. So
16 this is sealed for right now. It may be that once we've had a
17 chance to review what people said today we're going to unseal
18 this, so you may see media accounts down the road about the
19 testimony that was provided here today. But until that
20 happens, I would ask you not to discuss what happened during
21 this hearing with anybody else. Okay?

22 JUROR NUMBER █: I won't. But I do have to ask a
23 question.

24 THE COURT: Sure.

25 JUROR NUMBER █: If I may?

1 THE COURT: You may.

2 JUROR NUMBER █: Me coming in here today is a
3 question of integrity, and I would like to know why you have
4 singled me out amongst all the jurors. That's really a
5 concern to me. This is embarrassing to begin with that all
6 this even happened, and I want to know why I was singled out.

7 THE COURT: And let me address that, and then
8 Mr. Rittgers may want to say something as well.

9 So as you observed during your testimony, you heard
10 from one of the other jurors that a couple of jurors got
11 questioned after the hearing. Mr. Rittgers, on behalf of his
12 client, asked to be able to talk with all of the remaining
13 jurors. I thought that would be too big an imposition on all
14 of these people who have already given time from their lives
15 to participate in the criminal justice system.

16 So I issued an order allowing them to pick,
17 essentially at random, two jurors from the remaining ten to
18 talk to after we talked to the two who were most directly,
19 kind of, involved, either because one was the comment on
20 social media and one was the juror about whom she had said
21 something on social media. So those two were talked to, which
22 left ten of the 12 jurors.

23 And I said rather than talk to all ten and bring them
24 all in and inconvenience them all, could you pick two to do
25 that, and he picked two jurors. And I think, as he said, he

1 picked you, in part, because one of the jurors we talked to
2 had mentioned that she had texted with you. I think that's
3 all it was.

4 So it wasn't any way a reflection on you; it was more
5 a reflection on information that had been gleaned from those
6 other two jurors. Does that make sense?

7 JUROR NUMBER █: Yes. And is everybody satisfied, or
8 will I be called back?

9 THE COURT: Oh, you're done testifying. I mean,
10 there may be -- they may ask to follow up with some other
11 jurors. I don't know, and I don't know -- we'll have to rule
12 on that. But I think for right now this is over and that's
13 all you'll have to do. Again, I do apologize that you had to
14 come down.

15 JUROR NUMBER █: Thank you.

16 THE COURT: All right. Very good.

17 (Juror Number █ exited the courtroom.)

18 THE COURT: You may be seated.

19 Mr. Rittgers, anything further?

20 MR. RITTGERS: Your Honor, we would just make a
21 motion, based on what the juror testified to, to preserve her
22 phone.

23 THE COURT: Preserve whose phone?

24 MR. RITTGERS: Juror Number █'s phone. We'd also --

25 THE COURT: On what grounds?

1 MR. RITTGERS: She indicated that she -- we didn't
2 have an opportunity to see the phone, and she did indicate
3 there were back-and-forth text messages with Juror Number █,
4 who we know was --

5 THE COURT: About meeting for coffee, yeah.

6 MR. RITTGERS: That's what she said.

7 THE COURT: Yeah. That motion is overruled.

8 MR. RITTGERS: And, Your Honor, based on the fact
9 that Juror Number █ -- there is testimony now and evidence
10 Juror Number █ was on her phone during deliberations, at the
11 end of the deliberations, ultimately voted to convict on two
12 counts, and Juror Number █ indicated she heard people talking
13 about their interpretation of witnesses and testimony when
14 they were lined up in the hallway, we would renew our motion
15 for a forensic evaluation.

16 THE COURT: Well, I don't see how the latter in any
17 way relates to the forensic evaluation of the phone. What
18 does press comments have to do with a forensic evaluation of a
19 phone?

20 MR. RITTGERS: I agree with you on that.

21 THE COURT: Okay. So you're predicating it on the
22 fact that one of the two jurors today testified that Juror █
23 was on -- may have been on her phone at some point during
24 deliberations. But as the juror who testified today said, she
25 has no idea what was displayed on the phone. I guess for all

1 she knows it could have been her playing a game on her cell
2 phone during deliberations.

3 MR. RITTGERS: It's possible. But at this point, we
4 know that Juror Number █ was on her phone at the end of
5 deliberations. Juror Number █ was communicating with third
6 parties throughout the trial from the beginning of voir dire.
7 Third parties were mentioning P.G. Sittenfeld on her Comments.
8 Third parties were putting URL links to *cincinnati.com*
9 articles which were very disfavorable to Mr. Sittenfeld --

10 THE COURT: Links or link? You used plural.

11 MR. RITTGERS: Cincinnati.com link.

12 THE COURT: It was a single link, right?

13 MR. RITTGERS: But there were multiple articles in
14 that link. That page was dominated by Sittenfeld news, and
15 every single article was absolutely against Sittenfeld.

16 THE COURT: Well, that link, I believe, was the first
17 day of trial, right?

18 MR. RITTGERS: It might have been.

19 THE COURT: So you're saying that the articles on
20 that link on the first day of trial were negative to
21 Mr. Sittenfeld?

22 MR. RITTGERS: Horribly negative. I mean, without
23 any objective -- I believe Your Honor would say that -- I think
24 it was three or four of the six that were seen within that
25 link were absolutely negative towards Sittenfeld.

1 THE COURT: Okay.

2 MS. GLATFELTER: The question in the hearing today
3 was whether there was any extraneous influence. That is the
4 question. They have proven no additional extraneous influence
5 to justify looking at a juror's cell phone. There is nothing.
6 Even if she was looking at something on her phone, it did not
7 influence the deliberations, as we've heard from every single
8 juror that has testified under oath. The Court has already
9 found her credible in regard to whether she clicked on the
10 link or not, and there is nothing here that has changed the
11 credibility on that matter.

12 THE COURT: Mr. Rittgers?

13 MR. RITTGERS: I won't relitigate what we've already
14 briefed. Juror Number █ has deleted things. We know all
15 that, and I won't get more into that here.

16 I had mentioned the standing up outside the hallway,
17 and I conflated it with needing the forensic, which I agree
18 with you, Your Honor. But I do mention that again because
19 Juror Number █ and █ -- or Juror Number █ and █ who testified
20 today, from my understanding of where all these conversations
21 were taking place, would have been farther away than at least
22 11 or 12 jurors to communications about interpretations of
23 what lawyers and other talking heads had to say about what
24 they were interpreting was happening inside the courtroom.

25 At least now we have one juror who doesn't have much

1 of a recollection, although she recognized as people there and
2 talking to the press corps. Another juror has at least enough
3 recollection to know that there were comments about these
4 talking heads' interpretation of what was happening inside the
5 courtroom during the trial and at multiple points during the
6 trial within earshot of jurors and in much closer earshot to
7 many other jurors who we have not spoken with or inquired.

8 So we would ask to inquire with those other jurors.

9 MS. GLATFELTER: Again, the question is whether there
10 is extraneous influence that affected the deliberations. We

11 --

12 Regardless of the fact that the media is making
13 comments, whether the media is making comments, posting
14 articles, the question is whether the jurors considered that
15 information during their deliberations. Every witness we've
16 had in here, every juror has testified that there was no
17 extraneous influence. Just because the media is out there
18 doesn't mean it translates into an extraneous influence.
19 There is no further basis for inquiry, and there is no further
20 basis for a forensic exam of anyone's phone.

21 THE COURT: Yeah. So where the Court is at this
22 point -- obviously, I've allowed some inquiry into the jury.
23 It's very unusual to allow inquiry with individual jurors
24 after a verdict has been returned. Out of an abundance of
25 caution, I have allowed some limited inquiry here with regard

1 to, at this point, four members of the jury. I recognize that
2 it's an odd situation where a juror was posting on social
3 media during trial. I believe I have relatively extensively
4 outlined my views on that topic in the opinions that I've
5 issued to date with respect to the extent to which they
6 provide the basis for further inquiry. I have allowed further
7 inquiry as to two additional jurors. I've not heard anything
8 during the inquiry today that would change my view with
9 respect to the need for additional inquiry.

10 So, obviously, Mr. Rittgers you are free to include
11 in your post-trial motions argument based on the Facebook
12 comments by one of the jurors and the extent to which you
13 believe they may have undermined the verdict. I'm not
14 precluding you from making arguments in that regard.

15 But in terms of the need for additional evidence, I
16 believe that nothing that I've heard today has changed my view
17 that the evidence-gathering phase of this should be over, and
18 so I'm not inclined to allow additional evidence-gathering
19 from the jurors on this topic.

20 Of course you have preserved your objection to
21 whether you've had an opportunity to have a meaningful
22 investigation of the potential for jury bias. You know, you
23 can certainly present that argument in your post-trial
24 motions. To the extent an appeal is necessary down the road,
25 you can certainly present that argument on appeal.

1 But the Court believes that the evidence-gathering
2 phase of this, at least with respect to interviewing jurors
3 about what happened in the jury room, should be and is over.

4 I'll note that, and I think we just saw with regard
5 to the juror who was here today, that these jurors see this as
6 an immense invasion of their privacy. They see it as casting
7 a shadow on their integrity. Despite the Court's best efforts
8 to make it clear to this juror that this proceeding was in no
9 way meant to do that, I think it's inherently problematic to
10 bring jurors in to discuss what happened in the jury room
11 after a trial is over because I think it leads them to believe
12 that in some way they did not faithfully discharge their
13 duties as jurors.

14 And, you know, beyond Juror Number █, who I think was
15 violating the admonition that was given by the Court
16 repeatedly during trial, you know -- and we've already
17 discussed and will continue to discuss the impact, if any, of
18 that on the verdict. But I just don't think there is any
19 reason to believe that any of these jurors did not faithfully
20 discharge their duties as jurors.

21 And even with regard to Juror Number █, as I've
22 already found, I believe she was credible in saying she had
23 not clicked on that link and that she had not considered
24 extraneous information, again without prejudice to your
25 ability to continue to raise that in post-trial motions.

1 But I'm just really hesitant to allow further inquiry
2 of these jurors recognizing the impact that it has on them.
3 We've already asked them to give two and a half weeks of their
4 life to the criminal justice system here, and I think this
5 needs to be at an end. So that's where I'm at on this,
6 again, without prejudice to your ability to raise the
7 substance of any of the evidence that we've already received
8 in post-trial motions.

9 So do the parties understand where I am on this at
10 least?

11 Mr. Rittgers?

12 MR. RITTGERS: Yes, Your Honor.

13 THE COURT: Very good.

14 MS. GLATFELTER: Yes, Your Honor.

15 THE COURT: Any questions?

16 MS. GLATFELTER: Not from the government.

17 THE COURT: Okay. There is one additional issue. I
18 believe -- you know, the Federal Rules don't really provide
19 for this type of proceeding, so it's all a little bit of
20 reasoning by analogy, but I think there may be witness fees
21 that are due to both the witness who testified by video and
22 the witness who showed up, and that there may be some mileage
23 charges that are due. I am informed that I don't think the
24 Court can pay that.

25 Is that right, Scott?

1 COURTROOM DEPUTY: We cannot pay the jurors out of
2 the juror fund for them coming in. They would need to be
3 treated as witnesses for reimbursement.

4 THE COURT: Okay. So there is no -- this is a rare
5 enough occurrence that there isn't a little box that I can
6 check to get these people paid the fees to which I believe
7 they're entitled. So I think since --

8 Mr. Rittgers, since it was Mr. Sittenfeld that
9 requested this -- you know, I don't think the fees are
10 meaningful, but I think I'm going to need to attach them to
11 you -- or to your client.

12 MR. RITTGERS: We have no objection.

13 THE COURT: Okay. Very good. I just don't really
14 know what to do about it beyond that. Very good.

15 Anything else we need to put on the record before we
16 close the proceedings today?

17 The government?

18 MS. GLATFELTER: No, Your Honor. Thank you.

19 MR. RITTGERS: No, Your Honor.

20 THE COURT: Very good. All right. Thank you,
21 everyone.

22 COURTROOM DEPUTY: All rise. Court is in recess.

23

24 (The proceedings concluded at 12:50 p.m.)

25

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A REDACTED TRANSCRIPT FROM
THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/s/Maryann T. Maffia September 6, 2022

**Maryann T. Maffia, RDR
Official Court Reporter**